IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

Ram Narayan Vs. District Judge, Bikaner and another

S.B.CIVIL WRIT PETITION NO.1815/2006

Date of order : 19.04.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.R.Beniwal for the petitioner

BY THE COURT:

The petitioner Ram Narayan, having been elected as Sarpanch of Gram Panchayat, Palana in the elections held on 04.02.2005 is facing an election petition filed by the respondent No.2 Goverdhan Singh (referred herein as 'the election petitioner') submitted fundamentally on the ground that the election petitioner filled up his nomination to contest the said election but a fabricated withdrawal notice was submitted to the Returning Officer and on that basis he was deprived to contest the election. The present petitioner has filed reply to the election petition refuting the allegations and

has submitted that the election petitioner himself has submitted the notice for withdrawal in two copies to the Returning Officer one of which was pasted on the Notice Board; and the election petitioner having withdrawn his candidature, he was rightly not included in the list of candidates.

From the material placed on record, it appears that the election petition has already been put to trial and evidence of the parties has also been recorded. However, the election petitioner submitted an application (Annex.8) on 21.02.2006 before the learned District Judge, Bikaner trying the election petition with the submissions that he has got exhibited the certified copy of the alleged withdrawal notice as Ex.5; and with reference to the reply averments and the statements made during the trial, it was pointed out that the respondent to the election petition (i.e. the present petitioner) has attempted to establish that a copy of the withdrawal notice was exhibited on the Notice Board. The election petitioner submitted that on 18.02.2006 he applied for certified copy of the withdrawal notice and though earlier he was supplied only one certified copy but now he has been supplied certified copies of both the copies (of withdrawal notice) and they being the certified copies from public record are not fabricated or manipulated

and for the effective determination of the petition, these certified copies deserve to be taken on record. The application was duly replied by the petitioner (Annex.9) with the submissions that the matter was already fixed for final arguments and no new document could be produced at this stage.

The learned District Judge, after considering the submissions of the parties, observed that a copy of the documents sought to be produced had already been produced as Ex.5; and now it was stated that both the copies (of withdrawal notice) were attached in the official record and certified copies of both such copies were sought to be submitted; and they were not likely to be fabricated. Learned District Judge was of opinion that these documents were relevant for disposal of the matter and deserve to be permitted in the interest of justice and, accordingly, allowed the application but on costs of Rs.200/- and at the same time permitted the petitioner to adduce rebuttal evidence after the documents were exhibited. The petitioner seeks to challenge this order dated 23.03.2006 (Annex. 10) in the present writ petition.

It has been contended in this writ petition with reference to the requirements of the rules that an election petition under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 could be presented only by a candidate at such election and the election petitioner having already withdrawn his candidature cannot maintain the election petition. It has further been submitted that the election petition suffers from non-joinder of necessary parties particularly the other contesting candidates. In relation to the impugned order, it has been submitted that the learned District Judge has acted wholly illegally in allowing the application after the entire evidence was over though the documents in question were in existence right from the beginning and no reason is available on record for the election petitioner not submitting the documents alongwith the petition or during the evidence. Learned counsel for the petitioner Mr. J.R. Beniwal has strenuously contended with reference to the decisions in Bhagawani Devi Mohata Hospital Vs. A.D.J. Rajgarh & anr. : 2005 (2) CDR 1019 (Raj.) and Kejriwal Enterprises Vs. General Manager, Ordnance Factory and others : AIR 2004 Calcutta 225 that the documents in question could not have been permitted at the stage of final arguments and the procedure sought to be adopted by the learned District Judge remains impermissible in law.

Having given a thoughtful consideration to the submissions and having examined the considerations adopted by the learned District Judge, Bikaner while passing the impugned order dated 23.03.2006, this Court is satisfied that the learned District Judge has acted squarely in conformity with law and the impugned order calls for no interference.

It is to be imbibed that the rules of procedure are always intended to sub serve the cause of justice and are required to be construed in that manner only. The Hon'ble Supreme Court in the case of Salem Advocate Bar Association Vs. Union of India: 2005 (6) SCC 344 has been pleased to point out the fundamental principles over again thus, -

> "The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure, which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress."

In the hearing of an election petition under the Rules of 1994 the procedure provided in the Code of Civil Procedure has been made applicable in so far it could be and proviso (d) of Rule 85 makes it clear that the judge hearing the petition

would only be bound to require production of, or to receive so much evidence, oral or documentary as he would consider necessary. In the context of the fact situation of the present case, the learned District Judge has very rightly took into comprehension the questions involved in the case and then exercised his jurisdiction on the valid consideration that the documents sought to be produced are directly relevant for just determination of the matter and they are not likely to be fabricated or created documents. The learned District Judge has yet given due regard to the aspect of delay in production of document by imposing costs for receiving of the documents and has further taken care to provide reasonable opportunity to the present petitioner to adduce evidence in rebuttal. The order impugned serves the cause of justice and has been made squarely in conformity with the requirements of providing fullest opportunity to all the parties to put forward their case for a just determination of the real questions in controversy. The objections sought to be raised by the petitioner do not appear to be well founded and seem to be only an attempt to avoid fair trial of the election petition.

Learned counsel for the petitioner emphatically relied upon the decision of this Court in Bhagawani Devi Mohata Hospital (supra) to contend that the documents could not have

been received in evidence at this stage and has particularly referred to paragraph 15 to 17 of the said decision. Suffice it to notice that the ratio of the said decision, instead of lending any assistance to the petitioner, squarely covers the matter in issue against the petitioner. In the said decision in Bhagawani Devi Mohata Hospital, the plaintiff filed an application under Order 7 Rule 14 CPC seeking permission to produce 25 documents that was allowed and the plaintiff filed another application under Order 7 Rule 14 (2) and (3) CPC seeking direction against the defendant for production of certain documents. The trial court permitted the plaintiff to produce the documents and so also directed the petitioner-defendant to produce the document referred in the application. The writ petition was submitted against both the orders. So far the first part of the matter, of permitting the plaintiff to produce the documents, was concerned this Court after examining the facts stated in the petition and the reasons assigned in the impugned order found, -

> "5. After going through the facts mentioned in the writ petition as well as the reasons given in the impugned order, it is clear that the trial court, after carefully examining the documents and considering all aspects of the matter, acted within its jurisdiction and permitted the plaintiff to produce the documents in evidence, though filed late. There is no error of jurisdiction or even error of law so far as the impugned order to the extent

> of allowing the application u/O.7, R.14 CPC filed by the plaintiff for taking the documents on record is concerned."

On the other hand, so far the directions issued to the defendant to produce the document was concerned, this Court found in the referred paragraphs that the learned trial court ordered production of the documents by the petitioner ignoring its objections and, therefore, that order could not be sustained. This Court, therefore, partly allowed the petition; and only that part of the impugned order was set aside which related to issuance of directions to the defendant-petitioner to produce the documents. It is obvious from the said decision in Bhagawani Devi Mohata Hospital itself that when the trial court examines the documents and considers all aspects of the matter, it acts within its jurisdiction to permit the plaintiffs to produce the documents in evidence and there is no error of jurisdiction or even an error of law. Obviously, such order does not deserve interference under Article 227 of the Constitution of India. Moreover, in the present case, the two certified copies obtained by the election petitioner seem directly relevant for just determination of the questions involved in the case and an examination of the evidence on record makes it clear that the election petitioner has been

precisely cross-examined on the question if a copy of Ex.5 was exhibited on the Notice Board or not; and the present petitioner has also been cross-examined with the question that it was not so exhibited. It is evident that the documents sought to be produced by the election petitioner could not have been dubbed as irrelevant and the learned District Judge has acted precisely in conformity with law and within the bounds of his jurisdiction while receiving the disputed documents on record even if filed late. Reference to the case of Kejriwal Enterprises (supra) is not apposite to the questions involved in the present case and on the contrary, the Hon'ble Calcutta High Court has also observed therein that the documents not entered in the list and not presented with the plaint could still be tendered in evidence with the leave of the Court. In the present case, leave of the court has been sought on substantial grounds and has been granted on relevant considerations. So far other objections regarding maintainability of the election petition are concerned, they are of no relevance at this stage as they are the subject matter of decision before the learned trial court and the election petition is yet to be decided on merits.

This Court is clearly of opinion that there is no substance in this writ petition nor the impugned order could be said to be resulting in any failure of justice and on the contrary

the petitioner has specifically been extended opportunity to adduce rebuttal evidence. The writ petition remains baseless and deserves to be dismissed.

As a result of the aforesaid, this writ petition fails and is dismissed summarily.

(DINESH MAHESHWARI),J.

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